

8.070.140 Stormwater Enterprise Fund

(a) ESTABLISHED. There is hereby established within the Department of Public Works a utility known as the "Stormwater Division" under the day-to-day supervision of the Superintendent of Public Works.

(b) PURPOSE. The Department of Public Works shall administer the stormwater management programs of the Town through the Stormwater Division. It shall be funded by revenue collected through the Stormwater fee and such other funds as may, from time to time, be appropriated or obtained through other sources including but not limited to grants and low-interest loans. The stormwater management program is designed to promote the health and safety of the public, to protect property from flooding and the damage caused by stormwater runoff, and to protect and manage water quality by controlling the level of pollutants in stormwater runoff and the flow of water as conveyed by man-made and by natural stormwater management systems and facilities.

(c) AUTHORITY. This chapter is adopted in accordance with the authority granted by Amendment Article 89 to Amendment Article 2 of the Massachusetts Constitution, MGL c. 83, §§ 1 through 24, and such other powers as granted to cities and towns in the General Laws.

(d) DEFINITIONS. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

CREDIT - A reduction in the amount of a Stormwater fee charge to a particular property.

DIRECT COSTS - The costs incurred in the operation and maintenance of the stormwater system as reflected in the Stormwater Enterprise Fund budget.

DWELLING UNIT - The individual, private premises contained in any building intended, whether occupied or not, as the residence for one household, regardless of the number of individuals in the household. A building may contain more than one dwelling unit.

GENERAL LAWS - The General Laws of the Commonwealth of Massachusetts.

IMPERVIOUS SURFACE - Those areas which prevent or impede the infiltration of stormwater into the soil in the manner in which it entered the soil, in natural conditions, prior to development. common impervious surfaces include, but are not limited to, rooftops, buildings or structures, sidewalks, walkways, patio areas, swimming pools, decks, driveways, parking lots, storage areas, compacted gravel and soil surfaces, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

INDIRECT COSTS - The costs incurred in the operation and maintenance of the stormwater system including, but not limited to, health insurance, property and casualty insurance, utility expenses, life insurance, and retirement. Another

example of an indirect cost would be the value of time spent by General Fund employees in the Collector's office processing Enterprise Fund user payments.

LARGE RESIDENTIAL PROPERTY - Improved property containing apartments, or condominiums with four or more dwelling units and rooming and boarding houses. Large residential properties shall not include improved property containing structures used primarily for non-residential purposes (i.e., hotels, motels, retirement centers, nursing homes or assisted living homes or properties designated as "mixed use" properties by the Board of Assessors).

NON-RESIDENTIAL PROPERTY - Property that is not small residential property as defined herein, including, but not limited to, such property as commercial and office buildings, public buildings and structures, industrial and manufacturing buildings, Large Residential Property, storage buildings and storage areas, parking lots, roadways, driveways, parks, recreation properties, tennis courts, swimming pools, public and private schools and universities, research facilities and stations, hospitals and convalescent centers, airports, agricultural uses, water and wastewater treatment plants, hotels, motels, retirement centers, nursing homes or assisted living homes, properties designated as "mixed use" properties by the Board of Assessors, and any other form of use not otherwise mentioned which is not a residential property.

PERVIOUS SURFACE - Those areas that allow the unimpeded infiltration of stormwater into the soil. Common pervious surfaces include, but are not limited to, lawn area, forest land, agricultural lands, meadows and other undeveloped land. In determining utility fee calculations, all land on a parcel of property not defined as impervious land will be considered to be pervious.

PROPERTY ASSOCIATIONS - A condominium, cooperative, or other form of ownership, whether residential, commercial or multiple-use, in which fees are divided among multiple record title owners by instrument recorded in the Hampden Registry of Deeds or Hampden Land Court.

SMALL RESIDENTIAL PROPERTY - Improved property containing one, two or three dwelling units. Small residential properties shall not include improved property containing structures used primarily for non-residential purposes (i.e., hotels, motels, retirement centers, nursing homes or assisted living homes or properties designated as "mixed use" properties by the Board of Assessors).

STORMWATER - The surface water runoff from precipitation.

STORMWATER FEE - The periodic user fee imposed pursuant to this chapter by the Town of East Longmeadow for providing stormwater management.

(e) FEE ESTABLISHED; BILLING FREQUENCY; DEPOSIT TO ENTERPRISE FUND ACCOUNT.

- (i) Pursuant to MGL c. 83, § 16, the Town hereby establishes a charge for the use of the stormwater management of the Town to be known as the "Stormwater fee."

- (ii) The Stormwater fee is imposed on each parcel of residential property and each parcel of non- residential property, whether occupied or not. The Stormwater fee shall be billed at least annually, but not more frequently than in four quarterly increments, as determined by the Town Manager. The fee shall be billed to the record title owner of the property. The billing shall be consolidated in the same bill as is sent to said property owner for other services provided by the Town supported by fees, including water service and sanitary sewer use. If the property does not receive a water/sewer bill from the Town, a bill for only the Stormwater fee will be sent. Payment shall be due 30 days after the issue date of the bill for the Stormwater fee.
- (iii) Receipts generated from the Stormwater fee shall be deposited to an enterprise fund account to be known as the "stormwater management account" set up in accordance with the authority granted by MGL c. 44, § 53F 1/2. The funds deposited to this account shall be used to fund the stormwater management program of the Town.

(f) RATES

- (i) The Superintendent of Public Works shall recommend an annual budget for stormwater management services to the Town Manager. The Town Manager shall include a proposed annual budget for the stormwater management in the proposed operating budget submitted to the Town Council in accordance with the Charter of the Town of East Longmeadow. The budget submitted by the Superintendent and proposed by the Town Manager shall include rates in an amount sufficient to provide for a balanced operating and capital improvement budget for the stormwater management services.
- (ii) A user fee based on property type or Land Use Code (LUC) shall be imposed with respect to each non-exempt/exempt property in the Town; Single Family Homes (LUC 101), Two Family Homes (LUC 104), Three Family Homes (LUC 105), Two Family Homes on Single Parcel (LUC 109), Residential Condos (LUC 102), 4-8 Unit Apartments (LUC 111), Mixed Use Parcels (LUC 013) and Chapterland residential shall be charged \$25 per year (except Fields at Chestnut). Exempt Parcels (LUC 900) currently being charged for Town Utilities will be charged \$100 per year. Mixed Use Commercial/ Residential (LUC 031) shall be charged \$200 per year. Apartment >8 (LUC 112), Congregate Living Facilities LUC 125, Commercial & Industrial with LUC 300's & 400's, Commercial Condos (LUC 343) and Fields at Chestnut (per unit) shall be charged \$500 per year. Agricultural Land and Vacant Residential Land will not be subjected to this fee.
- (iii) The Town Council shall have the authority to set and modify the user fee rates so that the total revenue generated by said charges, and any

secondary sources of revenue, shall be sufficient to fund the Town's stormwater program.

(g) SCOPE OF RESPONSIBILITY FOR STORMWATER MANAGEMENT SYSTEMS AND FACILITIES.

- (i) The Town shall be responsible for all costs to operate, maintain, improve and access those stormwater management systems and facilities which are located:
 - A. Within public road rights-of-way;
 - B. On private property but within easements granted to, and accepted by, the Town of East Longmeadow, or which are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or such other lawful means to allow for operation, maintenance, improvement and access to the stormwater management system facilities located thereon;
 - C. On public land which is owned by the Town and/or land of another governmental entity as to which the Town has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon.
- (ii) Operation, maintenance and/or improvement of stormwater management systems and facilities which are located on private or public property not owned by the Town, and for which the Town lacks a lawful right of entry, shall be and remain the legal responsibility of the property owner, except as otherwise provided for by state and federal laws and regulations.

(h) PURPOSES OF FUND. The stormwater management account shall only be used for the direct and indirect costs of the Stormwater Division to provide stormwater management services as defined in subsection (g), including without limitation the direct and indirect costs of the following:

- (i) Acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater management systems and facilities;
- (ii) Administration and implementation of the stormwater management programs, including the cost of labor attributable to the stormwater management program and the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;
- (iii) Engineering and design, debt service and related financing expenses, construction of new facilities and enlargement or improvement of existing facilities;
- (iv) Operation and maintenance of the stormwater systems, including catch basin cleaning, ditch maintenance, street sweeping and the

purchase of equipment for use in the operation and maintenance of stormwater systems;

- (v) Capital projects for stormwater management;
- (vi) Illicit discharge detection and elimination;
- (vii) Monitoring, surveillance, and inspection of stormwater control devices;
- (viii) Water quality monitoring and water quality programs;
- (ix) Retrofitting developed areas for pollution control;
- (x) Inspection and enforcement activities;
- (xi) Billing and related administrative tasks; and
- (xii) Other activities which are determined to be reasonably necessary by the Superintendent of Public Works, including those related to regulatory compliance.

(i) SUBSECTION (i) IS INTENTIONALLY OMITTED.

(j) LIABILITY FOR FEE; EXEMPTIONS.

- (i) The Town finds that all real property in the Town contributes to runoff and either uses or benefits from the maintenance of the stormwater system. Therefore, except as provided in this section or otherwise provided by law, no public property, including public property funded by taxpayers of the Town of East Longmeadow, or private property located in the Town of East Longmeadow shall be exempt from the Stormwater fee charges.
- (ii) Notwithstanding the foregoing, the Town establishes exemptions to the Stormwater fee as follows:
 - A. Public streets, highways and rights-of-way. However, maintenance buildings and/or other improved property used for road maintenance purposes shall not be exempt from Stormwater fee charges. All other state, federal, and county properties are subject to the user fee charges on the same basis as private properties.

(k) FEE CREDITS.

- (i) The Town Manager shall develop and recommend a proposed Stormwater Management Credit Policy ("Credit Policy"). The Credit Policy as recommended by the Town Manager shall be submitted to the Town Council for approval. Upon approval, the Credit Policy will define potential credits or adjustments such as: for stormwater improvements, undeveloped land with protected status, multiple undeveloped parcels under single ownership, seniors, low income, educational programs, and others. The Credit Policy shall be available for inspection by the public at the Department of Public Works and on the Town website.
- (ii) The Superintendent of Public Works is authorized to grant credits to property owners to be applied against the Stormwater fee based on the technical and procedural criteria set forth in the Credit Policy.

- (iii) Any credit allowed against the Stormwater fee shall be conditioned on continuing compliance with the Town's design and performance standards and/or upon continuing provision of the controls, systems, facilities, services, and activities upon which the credit is based. The Superintendent of Public Works may revoke a credit at any time for noncompliance with applicable standards and criteria as established in the Credit Policy or this chapter.
- (iv) In order to obtain a credit, the property owner must make application to the Town on forms provided by the Department of Public Works for such purpose, the application to be fully completed in accordance with the procedures outlined in the Credit Policy.
- (v) The Superintendent of Public Works shall have 30 days from the date an application for credit is deemed complete and accepted to either grant the credit in whole, grant the credit in part, or deny the credit. If the Superintendent fails to act by the end of that period, he/she will be deemed to have granted the credit.

(I) FEE BILLING, DELINQUENCIES, COLLECTIONS, ABATEMENTS.

- (i) Failure of the Town to send a bill for Stormwater fees shall not relieve the property owner of record from the obligation to pay for such utility. If a property is unbilled, or if no bill is sent for a particular parcel of land, the Town may back bill for the fees as applicable for a period not to exceed one year of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back-billed.
- (ii) Stormwater fee bills shall be managed by the Department of Public Works. The Town Treasurer/ Collector will manage collection of fees. The East Longmeadow Finance Department shall keep records of all paid and unpaid Stormwater fee bills and maintain financial records for the Department.
- (iii) If a bill for Stormwater fees is not paid in full by the 30th day from the date the bill is issued, interest at the rate of 12% per annum shall accrue on any unpaid balance. Interest shall accrue beginning the day after a bill is due.
- (iv) At any time after interest begins to accrue on an unpaid account, the East Longmeadow Town Collector may serve on the party assessed a statement of the amount due, including interest, with a demand for payment. A charge as set forth in Chapter 300, Section 2-319 Licenses and Permits, Unpaid Fees, shall be made for such demand. If the amount due remains unpaid 14 days after mailing of said demand, the East Longmeadow Town Collector shall commit the amount to the Board of Assessors for inclusion on the next annual property tax bill. Upon inclusion of the unpaid amount on an annual property tax bill, a lien on the property shall exist in the amount due,

which lien shall have priority over all other liens except municipal liens and mortgages of record existing prior to the recording of a notice of lien.

- (v) In the event that a property owner believes the Stormwater fee is improperly calculated or is otherwise incorrect, the property owner may, within 30 days from the date of issuance of the Stormwater fee bill, and after payment of the bill in full, apply to the Department of Public Works for abatement. The application for abatement shall be supported by such information as is necessary for a reasonable person to conclude that it is more likely than not that the billing is in error. The Department of Public Works shall have 60 days to consider the request for abatement and render a written decision, which may deny the abatement, grant the abatement in full or grant the abatement in part. If the Superintendent fails to act by the end of that period, he/she will be deemed to have granted the abatement.
- (vi) Abatements that are offered by the Town of East Longmeadow per Massachusetts General Laws Chapter 59, Section 5 may also be requested from the Department of Public Works.

(m) APPEALS; HEARINGS.

- (i) In the event that a property owner is aggrieved by a written decision from the Department of Public Works denying an application for abatement, in whole or in part, or denying an application for a credit, in whole or in part, the property owner shall have 30 days from the date of the written decision to file a notice of appeal with the Department of Public Works. The notice of appeal shall be in writing and shall specify all grounds for appeal. Upon the filing of the notice of appeal with the Department of Public Works, the Department shall forthwith transmit to the Town Manager all documents constituting the record upon which the particular decision was made. The Town Manager shall set a date for hearing which shall be within 90 days of the date of the filing of the appeal, and a notice of hearing, setting forth the place, date and time of hearing shall be sent to the property owner no less than 10 days prior to the hearing date. The Town Manager shall preside over the hearing, and shall render a written decision within 30 days of the conclusion of the hearing, either affirming the action of the Department or reversing that action. If reversing the denial of an abatement, the decision shall specify the sum to be abated, which shall not exceed the amounts paid. If reversing the denial of a credit, the decision shall specify the amount to be credited prospectively against future charges.
- (ii) In the event that a property owner fails to pay the Stormwater fee as charged and the Town utilizes the process set forth in MGL c. 83, §§ 16A through 16F, to collect the unpaid charges, the property owner shall have the right to seek an abatement by filing an application for abatement with the Department of Public Works in accordance with the remedy specified

in MGL c. 83, § 16E, with a copy delivered to the Board of Assessors. The application for abatement shall conform to the requirements for a notice of appeal as set forth in Subsection (i), above, and the process for a hearing before the Town Manager, including the applicable time limits, shall be as set forth therein. In the event that the Town Manager denies the abatement, in whole or in part, it shall, in its written decision, include a statement notifying the property owner of the right to seek a review of the decision by the filing of an appeal with the Appellate Tax Board of the Commonwealth of Massachusetts within three months of the date of the decision of the Town Manager. As the right to Appellate Tax Board review under this Subsection (ii) is derived from applicable sections of the General Laws as contained in Chapters 59 and 83 thereof; to the extent that the terms of this chapter conflict with the terms specified there, the terms specified in the General Laws control.

STORMWATER MANAGEMENT CREDIT POLICY

1. Introduction

In December 2018, the Town of East Longmeadow approved Section 8.070.140 in the Town's bylaws to establish the Stormwater Enterprise Fund. Properties are assessed a Stormwater fee based on the Land Use Code, with the fees being deposited into the Stormwater Enterprise Fund. This fund is used for direct and indirect costs of the Stormwater Division in the Department of Public Works (DPW) in the Town of East Longmeadow, MA.

As described in Section 8.070.140 Paragraph (k) of the Town's bylaws, the DPW is authorized to grant credits to property owners to be applied against the Stormwater fee based on the technical and procedural criteria set forth in a Credit Policy developed by the Superintendent and Town Manager and approved by the Town Counsel.

This Credit Policy describes the policies, eligibility, technical criteria, and procedures for Stormwater Fee Credits in East Longmeadow, MA.

2. Eligibility

- Credits shall be given only to properties described as eligible in this policy.
- The property owner shall apply for the credits, provide documentation, and follow the procedures established by this policy. A \$200 application fee will be applied to new applications. No fee shall be assessed for annual renewal applications.
- Single Family Residential (SFR) properties are not eligible for credits under this policy, unless they meet Town and statutory requirements of a Senior Credit, Blind Resident Credit, or Disabled Veterans Credit.

3. Policies

- In order to obtain a credit, the property owner shall submit an application to the DPW for such purpose. The application shall be fully completed in accordance with the procedures outlined in this Credit Policy.
- Any credit allowed against the Stormwater fee charge shall be conditioned on continuing compliance with the Town's design and performance standards as stated in the Credit Policy and/or upon continuing provision of the controls, systems, facilities, services, and activities provided, operated, and maintained by the property owner(s) upon which the credit is based. The DPW may revoke a credit at any time for noncompliance with applicable standards and criteria as established in this Credit Policy or in Section 8.070.140.
- Property owners may claim more than one credit if eligible; however, the total value of credits shall not exceed 50% of the Stormwater fee for a particular property.
- When an application for a credit is deemed complete by the DPW, the Superintendent of Public Works shall have 30 days from the date the complete application was accepted to submit to the applicant, the Town Manager and the Town's Finance Director a written decision to grant the credit(s) in whole, grant the credit(s) in part, or deny the credit.
- Eligibility for specific credits is described in this policy. [?]

- Credit renewal applications shall be submitted at least thirty (30) days prior to the expiration date of the existing credit. An approved credit renewal will become effective on the expiration date of the existing credit.
- The Town maintains the right to inspect the property at the time of credit or renewal application and at any time that the site is receiving credit to determine credit applicability. Failure to allow inspection may result in revocation of all or part of the credit.
- The DPW shall annually report the credits granted to the Town Manager under this policy.

4. Credits

a. Educational Institution Credit

Eligibility: This credit is available to public and private K-12 education institutions and colleges and universities for increasing awareness of stormwater issues within the community. The Town's EPA stormwater permit requires public education and outreach to provide the public with an opportunity to understand and participate in the stormwater protection program. Education programs should concentrate on stewardship of water resources and minimization of demand on stormwater systems, and overall improvement to water quality and reduction in stormwater runoff.

Credit Value: The credit for eligible education institutions is 10% reduction in fees for the eligible property.

Credit Duration: This credit expires after five years and the property owner shall reapply if they wish to continue the credit.

Application Process: Property owners eligible for this credit shall submit the following to the DPW:

- A completed Application for Stormwater Fee Credit
- A proposed outline or curriculum for the education program, including the target audience/class, date and time of the education program, and stated goals. Education goals shall be aligned with the goals of the Town of East Longmeadow to educate and inform the public of the impacts of stormwater pollution and ways to minimize these impacts.
- Any educational materials produced must be made available to the public.

b. Stormwater BMP Credit

Eligibility: This credit is available to non-single family residential (NSFR) properties that implement structural Stormwater Best Management Practices (BMPs). All stormwater management systems that are included in a credit application shall meet the design requirements as defined by the current Massachusetts Stormwater Handbook; and other technical references as defined by the DPW. Eligible types of BMPs are listed in the table below and must be designed in accordance with Volume 2 Chapter 2 of the current version of the Massachusetts Stormwater Handbook. BMPs shall be sized to meet the treatment standards required by the Massachusetts Department of Environmental Protection Stormwater Management Standards. BMPs shall have been constructed no earlier than February 2008 (date of the Massachusetts Stormwater Handbook).

Type of Eligible BMP

Bioretention Area

Constructed Wetlands

Wet Basins

Dry Wells

Infiltration Basins and Trenches

Leaching Catch Basins

Subsurface Infiltration Structures

Porous Pavement

Water Quality Swales with forebays

Proprietary Separators

Sand and Organic Media Filters with pretreatment

Extended Dry Detention Basin with forebays

Proprietary Media Filters

Credit Value: The value of this credit is up to 50% of the total value of the stormwater fee for the property, depending on the percent of the impervious surface on the property being treated by the BMP.

The credit value will be equal to the maximum possible credit value of 50%, multiplied by the percentage of impervious surface on the property treated by the BMP. For example, if a Bioretention Area treats 50% of the impervious surface on a property, the property is eligible to receive a credit equal to 25% of the stormwater fee for the property (50% maximum possible credit, multiplied by 50% of the impervious surface on the property, equals a 25% credit).

Credit Duration: This credit is available for a period of five years from the time of application, provided the applicant submits a completed report of maintenance activities annually, including an annual photograph of the BMP. If an annual report is not received or is incomplete, the credit may be revoked at any time at the discretion of the Superintendent of Public Works. The property owner may reapply if they wish to continue the credit.

Application Process: There are two categories for this Credit. For properties that have gone through town permitting and obtained a Stormwater Management Permit, the following documentation shall be submitted to the DPW to apply for this Credit:

- A completed Application for Stormwater Fee Credit
- A copy of the Stormwater Management Plan as submitted to and approved by the Superintendent of Public Works
- A copy of the Operation and Maintenance Plan, as submitted to and approved by the Superintendent of Public Works

For those properties that have not gone through town permitting and obtained a Stormwater Management Permit, the following documentation shall be submitted to the DPW to apply for this Credit:

- A completed Application for Stormwater Fee Credit
- Design information and calculations for the BMP, including the impervious area being treated by the BMP as a total square footage and a percentage of the total impervious surface of the property

- A copy of an Operations and Maintenance Plan for the BMP including a photograph of the BMP and copies of maintenance records and receipts, and inspection reports